

AMENDED IN ASSEMBLY APRIL 24, 2007

AMENDED IN ASSEMBLY MARCH 27, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 682

Introduced by Assembly Members Berg, Garcia, and Huffman
(Coauthors: Assembly Members Beall and Laird)

February 21, 2007

An act to amend Sections 125090 and 125107 of, ~~to repeal Section 125092 of,~~ and to repeal and add Section 120990 of, the Health and Safety Code, relating to HIV/AIDS.

LEGISLATIVE COUNSEL'S DIGEST

AB 682, as amended, Berg. HIV/AIDS testing.

Existing law prohibits, except in certain cases, a person from testing a person's blood for evidence of antibodies to *the* probable causative agent of acquired immunodeficiency syndrome (AIDS) without the written consent of the subject of the test or the written consent of the subject, as provided, confirming that he or she obtained the consent from the subject.

This bill *would* delete those provisions, and would, instead, require a medical care provider, prior to ordering a test that identifies infection with human immunodeficiency virus (HIV), to inform the patient that the test is planned, provide information about the test, and advise the patient that he or she has the right to decline the test.

Existing law requires the physician and surgeon or other person engaged in the prenatal care of a pregnant woman or attending the woman at the time of delivery, prior to obtaining a prescribed blood specimen, to ensure that the woman is informed of the intent to perform

a test for HIV infection, the routine nature of the test, the purpose of the testing, the risks and benefits of the test, and certain other information about the risks associated with the transmission of HIV, and specifies that a woman has a right to accept or refuse this testing. Existing law requires that acceptance of testing for HIV be documented in writing on a prescribed form, with a copy to be maintained in the patient's medical file. Existing law authorizes a multispecialty medical group that provides health care services to enrollees of a health care service plan to use a form incorporating specified HIV information.

This bill would delete those provisions regarding the acceptance of HIV testing by a patient, and would, instead, specify that a woman has a right to decline this testing.

Existing law requires the physician and surgeon or other person engaged in the prenatal care of the pregnant woman or attending the woman at the time of labor, delivery, or post partum, after the results of HIV testing done pursuant to these provisions have been received, to explain the results and the implications for the mother's and infant's health, including any followup care that is needed. Existing law states that health care providers are strongly encouraged to seek consultation with other providers specializing in the care of HIV-positive women.

This bill would require that the woman also receive any followup testing that is needed. The bill would also state that health care providers are strongly encouraged to seek consultation with HIV specialists who provide care for pregnant and post partum HIV-positive women.

~~Existing law requires a prenatal care provider, as defined, primarily responsible for providing prenatal care to a patient to offer HIV information and counseling to every pregnant patient, including specified items, and specifies what the counseling shall include provides, notwithstanding any other provision of law, that completion of a statement of acceptance of an HIV test pursuant to specified existing law constitutes sufficient consent for HIV testing for a pregnant woman or woman at the time of labor and delivery, and prohibits a laboratory or health care provider from requesting further consent for HIV testing.~~

~~This bill would eliminate the items required to be included in HIV counseling offered to pregnant and post partum women, and would, instead, require that a prenatal care provider, at a minimum, provide in-person oral or written HIV information and counseling to every pregnant patient delete the provisions designating completion of the statement of acceptance of an HIV test as sufficient consent for the HIV testing under the circumstances described above.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 120990 of the Health and Safety Code
2 is repealed.

3 SEC. 2. Section 120990 is added to the Health and Safety Code,
4 to read:

5 120990. (a) Prior to ordering a test that identifies infection
6 with HIV, a medical care provider shall inform the patient that the
7 test is planned, provide information about the test, and advise the
8 patient that he or she has the right to decline the test.

9 (b) This section shall not apply when a person independently
10 requests an HIV test from the provider.

11 SEC. 3. Section 125090 of the Health and Safety Code is
12 amended to read:

13 125090. (a) Subdivision (a) of Section 125085 shall not be
14 applicable if the licensed physician and surgeon or other person
15 engaged in the prenatal care of a pregnant woman or attending the
16 woman at the time of delivery has knowledge of the woman's
17 blood type and accepts responsibility for the accuracy of the
18 information.

19 (b) Subdivision (b) of Section 125085 shall not be applicable
20 if the licensed physician and surgeon or other person engaged in
21 the prenatal care of a pregnant woman or attending the woman at
22 the time of delivery has knowledge that the woman has previously
23 been determined to be chronically infected with hepatitis B or
24 human immunodeficiency virus (HIV) and accepts responsibility
25 for the accuracy of the information.

26 (c) Prior to obtaining a blood specimen collected pursuant to
27 subdivision (b) of Section 125085 or this section, the physician
28 and surgeon or other person engaged in the prenatal care of a
29 pregnant woman shall ensure that the woman is informed of the
30 intent to perform a test for HIV infection, the routine nature of the
31 test, the purpose of the testing, the risks and benefits of the test,
32 the risk of perinatal transmission of HIV, that approved treatments
33 are known to decrease the risk of perinatal transmission of HIV,
34 and that the woman has a right to decline this testing.

(d) If, during the final review of standard of prenatal care medical tests, the medical records of the pregnant woman do not document a test for rhesus (Rh) antibody blood type, a test for hepatitis B, or a test for HIV, the physician and surgeon or other person engaged in the prenatal care of the woman shall obtain a blood specimen from the woman for the tests that have not been documented. Prior to obtaining this blood specimen, the provider shall ensure that the woman is informed of the intent to perform the tests that have not been documented prior to this visit, including a test for HIV infection, the routine nature of the test, the purpose of the testing, the risks and benefits of the test, the risk of perinatal transmission of HIV, that approved treatments are known to decrease the risk of perinatal transmission of HIV, and that the woman has a right to decline the HIV test. The blood shall be tested by a method that will ensure the earliest possible results, and the results shall be reported to both of the following:

(1) The physician and surgeon or other person engaged in the prenatal care of the woman or attending the woman at the time of delivery.

(2) The woman tested.

(e) After the results of the tests done pursuant to this section and Section 125085 have been received, the physician and surgeon or other person engaged in the prenatal care of the pregnant woman or attending the woman at the time of labor, delivery, or post partum care at the time the results are received shall ensure that the woman receives information and counseling, as appropriate, to explain the results and the implications for the mother's and infant's health, including any followup testing and care that *is* ~~are~~ indicated. If the woman tests positive for HIV antibodies, she shall also receive, whenever possible, a referral to a provider, provider group, or institution specializing in prenatal and post partum care for HIV positive women and their infants. Health care providers are also strongly encouraged to seek consultation with HIV specialists who provide care for pregnant and post partum HIV positive women and their infants.

(f) The provisions of Section 125107 for counseling are equally applicable to every pregnant patient covered by subdivisions (c) and (d).

~~SEC. 4. Section 125092 of the Health and Safety Code is repealed.~~

1 ~~SEC. 5. Section 125107 of the Health and Safety Code is~~
2 ~~amended to read:~~

3 ~~125107. (a) For purposes of this section, “prenatal care~~
4 ~~provider” means a licensed health care professional providing~~
5 ~~prenatal care within his or her lawful scope of practice. This~~
6 ~~definition shall not include a licensed health care professional who~~
7 ~~provides care other than prenatal care to a pregnant patient.~~

8 ~~(b) The prenatal care provider primarily responsible for~~
9 ~~providing prenatal care to a pregnant patient shall offer, at a~~
10 ~~minimum in-person, oral or written human immunodeficiency~~
11 ~~virus (HIV) information and counseling to every pregnant patient.~~

12 ~~(c) Nothing in this section shall be construed to require~~
13 ~~mandatory testing. Any documentation or disclosure of HIV-related~~
14 ~~information shall be made in accordance with Chapter 7~~
15 ~~(commencing with Section 120975) of Part 4 of Division 105~~
16 ~~regarding confidentiality and informed consent.~~

17 ~~SEC. 4. Section 125107 of the Health and Safety Code is~~
18 ~~amended to read:~~

19 ~~125107. (a) For purposes of this section, “prenatal care~~
20 ~~provider” means a licensed health care professional providing~~
21 ~~prenatal care within his or her lawful scope of practice. This~~
22 ~~definition shall not include a licensed health care professional who~~
23 ~~provides care other than prenatal care to a pregnant patient.~~

24 ~~(b) The prenatal care provider primarily responsible for~~
25 ~~providing prenatal care to a pregnant patient shall offer human~~
26 ~~immunodeficiency virus (HIV) information and counseling to~~
27 ~~every pregnant patient. This information and counseling shall~~
28 ~~include, but shall not be limited to, all of the following:~~

- 29 ~~(1) A description of the modes of HIV transmission.~~
30 ~~(2) A discussion of risk reduction behavior modifications~~
31 ~~including methods to reduce the risk of perinatal transmission.~~
32 ~~(3) If appropriate, referral information to other HIV prevention~~
33 ~~and psychosocial services including anonymous and confidential~~
34 ~~test sites approved by the Office of AIDS.~~

35 ~~(c) Nothing in this section shall be construed to require~~
36 ~~mandatory testing. Any documentation or disclosure of HIV related~~
37 ~~information shall be made in accordance with Chapter 7~~
38 ~~(commencing with Section 120975) of Part 4 of Division 105~~
39 ~~regarding confidentiality and informed consent.~~

1 ~~(d) Notwithstanding Section 125090 or any other provision of~~
2 ~~law, completion of a statement of acceptance of an HIV test~~
3 ~~pursuant to Sections 125090 and 125092 shall be sufficient~~
4 ~~documentation of consent for HIV testing of a pregnant woman~~
5 ~~or of a woman at the time of labor and delivery, and no laboratory~~
6 ~~or health care provider shall require any additional written consent~~
7 ~~or written form as a condition for HIV testing from any woman~~
8 ~~who is reasonably believed to be pregnant, who is receiving~~
9 ~~prenatal care, or who is undergoing a panel of tests designated for~~
10 ~~prenatal patients.~~